Supreme Court, U.S.
FILED
JUN 5 2002
CLERK

No. 01-896

IN THE

Supreme Court of the United States

FORD MOTOR COMPANY AND
CITIBANK (SOUTH DAKOTA), N.A.,
Petitioners,

v.

JOHN B. MCCAULEY, *et al.*,
Respondents.

On Writ Of Certiorari to the United States Court Of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF THE RESPONDENTS

LEO V. BOYLE
1050 31st St., N.W.
Washington, DC 20007
(202) 965-3500
President,
The Association of
Trial Lawyers of America

JEFFREY ROBERT WHITE
Counsel of Record
1050 31st. St., N.W.
Washington, DC 20007
(202) 965-3500

LAURA C. THARNEY
555 Rt. 18 South, PMB 219
East Brunswick, NJ 08816
(732)-448-9300
Attorneys for Amicus Curiae

BEST AVAILABLE COPY

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

IDENTITY AND INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3

I. THE COURT OF APPEALS CORRECTLY HELD THAT THE THRESHOLD AMOUNT REQUIRED FOR DIVERSITY JURISDICTION WAS NOT PRESENTED ON THE FACTS OF THIS CASE 3

A. The Federal Courts Are Courts of Limited Jurisdiction, and this Case does not Support the Exercise of that Jurisdiction. 3

B. Although the Federal Courts have Expressed Differing Views Regarding the Test for Determining Whether the Jurisdictional Threshold is Reached, this Case does not Meet the Requirements of any Recognized Test 5

C. Aggregation is Not Proper in this Case. 8

1. Aggregation and the "Defendant's Viewpoint". 11

2. No Single, Undivided Interest in Injunctive Relief Is Found in this Case. 16

3. Use of Petitioners' Inflated Compliance Number Does Not Confer Jurisdiction. 21

CONCLUSION 26

TABLE OF AUTHORITIES

CASES

Black v. Beame, 550 F.2d 815 (2nd Cir. 1977).....19

Carroll v. United States, 354 U.S. 394 (1957).....4

Caudle v. American Arbitration Ass'n, 230 F.3d 920 (7th Cir. 2000) 23

City of Indianapolis v. Chase National Bank, 314 U.S. 63 (1941).....4

Eagle v. American Tel. and Tel. Co., 769 F.2d 541 (9th Cir. 1985).....19

Earnest v. General Motors Corp., 932 F. Supp. 1469 (N.D. Ala. 1996).....20

Gibson v. Chrysler Corp., 261 F.3d 927 (9th Cir. 2001) 19

Gilman v. BHC Securities, Inc., 104 F.3d 1418 (2nd Cir. 1997).....15

Griffith v. Sealtite Corp., 903 F.2d 495 (7th Cir. 1990)..16

Hart v. Schering-Plough Corp., 253 F.3d 272 (7th Cir. 2001).....23

Healy v. Ratta, 292 U.S. 263 (1934).....24

Hoffman v. Vulcan Materials Co., 19 F. Supp. 2d 475 (M.D.N.C. 1998).....6

Hunt v. Washington State Apple Advertising Com'n, 432 U.S. 333 (1977) 6

In re Abbott Laboratories, 51 F.3d 524 (5th Cir. 1995) *aff'd by an equally divided court sub. nom. Free v. Abbott Labs.*, 529 U.S. 333.....10

In re Brand Name Prescription Drugs Antitrust Litigation, 123 F.3d 599 (7th Cir. 1997) *cert. den. sub nom. HJB, Inc. v. AmeriSource Corp.*, 528 U.S. 1181.....15

In re Cardizem CD Antitrust Litigation, 90 F. Supp. 2d 819 (E.D. Mich. 1999) 20

In re Ford Motor Co./Citibank (South Dakota), N.A., 264 F.3d 952 (9th Cir. 2001).....7, 20, 22

Kanter v. Warner-Lambert Co., 265 F.3d 853 (9th Cir. 2001) 11, 13

Karcher v. May, 484 U.S. 72 (1987) 3

Keene Corp. v. United States, 508 U.S. 200 (1993).....3

Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1993).....4

Leonard v. Enterprise Rent a Car, 279 F.3d 967 (11th Cir. 2002).....14

Lonnquist v. J. C. Penney Co, 421 F.2d 597 (10th Cir. 1970).....12, 17

Market Company v. Hoffman, 101 U.S. (11 Otto) 112 (1879).....14

Martin v. Franklin Capital Corp, 251 F.3d 1284 (10th Cir. 2001).....20

Middle Tennessee News Co., Inc. v. Charnel of Cincinnati, Inc., 250 F.3d 1077 (7th Cir. 2001).....10

Morrison v. Allstate Indem. Co., 228 F.3d 1255 (11th Cir. 2000).....14, 16

Phoenix Ins. Co. v. Woosley, 287 F.2d 531 (10th Cir. 1961) 18

Ridder Bros., Inc. v. Blethen, 142 F.2d 395 (9th Cir. 1944)6

Sellers v. O'Connell, 701 F.2d 575 (6th Cir. 1983).....16

Skokomish Indian Tribe v. France, 269 F.2d 555 (9th Cir. 1959) 18

Smith v. GTE Corp., 236 F.3d 1292 (11th Cir. 2001) 14, 20

Snow v. Ford Motor Co., 561 F.2d 787 (9th Cir. 1977) 11, 12

Snyder v. Harris, 394 U.S. 332 (1969) reh'g den. 394 U.S. 1025 ..... 8, 9

Spielman v. Genzyme Corp, 251 F.3d 1 (1st Cir. 2001). ... 4

Texas & P. Ry. Co. v. Gentry, 163 U.S. 353 (1893) 18

Troy Bank of Troy, Ind., v. G.A. Whitehead & Co., 222 U.S. 39 (1911) 17

United States v. Southern Pac. Transp. Co., 543 F.2d 676 (9th Cir. 1976) 17

Werwinski v. Ford Motor Co., 286 F.3d 661 (3rd Cir. 2002) 10, 23

Wolde-Meskel v. Vocational Instruction Project Community Services, Inc, 166 F.3d 59 (2d Cir. 1999) 10

Zahn v. International Paper Co., 414 U.S. 291 (1973). 9, 10

CONSTITUTIONS AND STATUTES

United States Constitution, Art. III § 1 3

Judiciary Act of 1789, 1 Stat. 73 4

28 U.S.C. § 1332 4

OTHER AUTHORITIES

Annot., "Criterion Of Jurisdictional Amount To Vest Jurisdiction Of Federal Court Where Injunction Is Sought," 30 A.L.R.2d. 602, Sec. 4(2) (1953) 6

Wright, Charles Alan, Arthur R. Miller and Edward H. Cooper, FEDERAL PRACTICE AND PROCEDURE JURISDICTION 3d, Sec. 3702 (1998) 5

No. 01-896

IN THE

Supreme Court of the United States

FORD MOTOR COMPANY AND
CITIBANK (SOUTH DAKOTA), N.A.,
Petitioners,

v.

JOHN B. MCCAULEY, *et al.*,
Respondents.

On Writ Of Certiorari to the United States Court Of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF THE RESPONDENTS

IDENTITY AND INTEREST OF AMICUS CURIAE

The Association of Trial Lawyers of America ("ATLA") respectfully submits this brief as amicus curiae. Letters granting consent to the filing of amicus curiae briefs have been filed with this Court.[1]

1 Pursuant to Rule 37.6, Amicus discloses that no counsel for a party authored any part of this brief, nor did any person or entity other than Amicus Curiae, its members, or its counsel make a monetary contribution to the preparation of submission of this brief.

ATLA is a voluntary national bar association whose approximately 50,000 trial lawyer members primarily represent individual plaintiffs in civil actions. ATLA's members support a right of access to the proper forum for an action. The members of ATLA, however, are concerned by any manipulation of longstanding jurisdictional requirements that would improperly remove a matter to federal court and deprive a plaintiff of his or her choice of forum for legal recourse.

SUMMARY OF THE ARGUMENT

Federal courts are courts of limited jurisdiction; those limits are established by the Constitution and the Congress. To expand jurisdiction of the federal courts to include a case or class of cases not presently within the scope of that jurisdiction must necessarily be accomplished by Congress, rather than by judicial decree.

In this diversity action, Petitioners sought removal of various state court cases in which they acknowledge that no single plaintiff has a claim that even approaches the federal jurisdictional threshold. In fact, no plaintiff has a claim that exceeds $3,500. Petitioners acknowledged that the monetary claims of the various plaintiffs could not be aggregated for the purposes of establishing jurisdiction. Instead, Petitioners suggest that the purported administrative costs of complying with the injunctive relief sought by the plaintiffs, which costs are entirely within their control and are vastly disproportionate to the monetary relief sought by any individual plaintiff, are sufficient to meet the amount in controversy requirement.

To accept Petitioners' arguments is to vitiate the jurisdictional limitations imposed on diversity actions. The consequence will be to open the federal courts to jurisdictionally deficient, even trivial claims - whether filed there by plaintiffs or removed by defendants - that include a prayer for injunctive relief. Such a result contravenes the intent of Congress in imposing a monetary threshold in federal diversity cases and does not comport with the salutary purposes of the statutes limiting the jurisdiction of the federal courts.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY HELD THAT THE THRESHOLD AMOUNT REQUIRED FOR DIVERSITY JURISDICTION WAS NOT PRESENTED ON THE FACTS OF THIS CASE

A. The Federal Courts Are Courts of Limited Jurisdiction, and this Case does not Support the Exercise of that Jurisdiction.

"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as *the Congress* may from time to time ordain and establish." United States Constitution, Art. III § 1. (emphasis added). "The power of federal courts to hear and decide cases is defined by Article III of the Constitution and by the federal statutes enacted thereunder." *Karcher v. May,* 484 U.S. 72, 77 (1987). Congress has the authority to define the jurisdiction of the lower federal courts "and, once the lines are drawn, 'limits upon federal jurisdiction . . . must be neither disregarded nor evaded." *Keene Corp. v. United States,* 508 U.S. 200, 207 (1993). In this case, the courts below properly recognized that they are courts of limited jurisdiction, possessing "only that power authorized by Constitution and statute . . . which is not to be

expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375, 377 (1993).

The jurisdictional statutes in effect at any particular time are "so much a product of the whole history of both growth and limitation of federal-court jurisdiction since the First Judiciary Act, 1 Stat. 73, they have always been interpreted in the light of that history and of the axiom that clear statutory mandate must exist to found jurisdiction." *Carroll v. United States,* 354 U.S. 394, 399 (1957). The "dominant note" in the successive statutes regarding diversity jurisdiction "is one of jealous restriction . . . [and] . . . relieving the federal courts of the overwhelming burden of 'business that intrinsically belongs to the state courts' in order to keep them free for their distinctive federal business." *City of Indianapolis v. Chase Nat. Bank,* 314 U.S. 63, 76 (1941) *reh'g den.* 314 U.S. 714. Hence the statute is to be "strictly construed." *Id.* A cause of action "is to be presumed" to lie outside this limited jurisdiction, "and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375, 377 (1993). Federal courts have "a responsibility to police the border of federal jurisdiction." *Spielman v. Genzyme Corp,* 251 F.3d 1, 4 (1st Cir. 2001).

The jurisdictional limitations for this case are found at 28 U.S.C.A. § 1332, which provides that the district courts have original jurisdiction in diversity cases in which the "matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs."[2]

---

[2] Section 11 of the Judiciary Act of 1789, 1 *Stat.* 78 fixed the requirement for the jurisdictional amount in controversy at $500. This jurisdictional amount was increased to $2,000 in 1887, to $3,000 in 1911, and to $10,000 in 1958. Thereafter, in 1988, the limit was increased to $50,000 and again, in 1996, to $75,000.

Congress has also conferred jurisdiction on the federal courts over certain cases irrespective of the amount in controversy. Those include bankruptcy, patent and copyright, postal matters, internal revenue, and civil rights actions. Should Congress see fit to alter the jurisdictional threshold amount with respect to class actions, it holds the power to do so. The assertion of the United States, participating as amicus curiae, that the "rules governing class actions have enormous consequences for the federal courts and interstate commerce" Br. of United States, at 2, is more appropriately addressed to Congress, rather than to propose to this Court a tortured interpretation of existing statutes and case law.

B. Although the Federal Courts have Expressed Differing Views Regarding the Test for Determining Whether the Jurisdictional Threshold is Reached, this Case does not Meet the Requirements of any Recognized Test.

Numerous decisions by this Court and the lower federal courts have held that the "amount in controversy for jurisdiction purposes is measured by the direct pecuniary value of the right that the plaintiff seeks to enforce or protect or the value of the object that is the subject matter of the suit." Charles Alan Wright, Arthur R. Miller and Edward H. Cooper, FEDERAL PRACTICE AND PROCEDURE JURISDICTION 3d, Sec. 3702 (1998). Generally, the determination of the amount in

controversy does not present a particular challenge; the amount or value a plaintiff seeks to gain, and that which a defendant seeks to conserve are often identical and easily ascertainable.

Where the amount in controversy is not easily ascertained, the courts have spoken somewhat "ambiguously of 'the object of the suit' in determining the amount in controversy . . . although there is support for the notion that the benefit to the plaintiff should control -- the so-called 'plaintiff viewpoint' rule." *Id.* Historically, most courts have examined the issue from the point of view of the plaintiff. Annot., "Criterion Of Jurisdictional Amount To Vest Jurisdiction Of Federal Court Where Injunction Is Sought," 30 A.L.R.2d. 602, Sec. 4(2) (1953). Petitioners contend that this case should be analyzed using the "either viewpoint" rule. Br. for Petitioners at 10-17. Under that rule, "value of the 'thing sought to be accomplished by the action' may relate to either or any party to the action." *Ridder Bros., Inc. v. Blethen,* 142 F.2d 395, 399 (9th Cir. 1944).

"In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt v. Washington State Apple Advertising Com'n,* 432 U.S. 333, 347 (1977). While there is a "basic agreement among the lower courts concerning what must be valued," there is a "seemingly never ending source of confusion" about how to value it in the absence of a clear definitive statement by this Court. *Hoffman v. Vulcan Materials Co.,* 19 F. Supp. 2d 475, 479 (M.D.N.C. 1998).

While acknowledging the "either viewpoint" view, the court of appeals below properly recognized the dangers inherent in applying it in the context of a

class action, noting the "inherent conflict" between the "either viewpoint rule" and the "non-aggregation rule" and suggesting that "the former must yield". *In re Ford Motor Co./Citibank (South Dakota), N.A,* 264 F.3d 952, 958 (9th Cir. 2001).

In doing so, the court of appeals did not create an improper class action exception to the "either viewpoint" rule, as asserted by one *amicus*. *See* Br. of Pharmaceutical Research and Manufacturers of America, at 12-20. Nor did the court, as claimed by another, bar class actions involving injunctive relief from federal courts. *See* Br. of Product Liability Advisory Council, at 5-8.

Rather, the Court of Appeals correctly recognized that in class actions, the jurisdictional analysis must proceed in stages:

> [The] threshold question is aggregation, and it must be resolved affirmatively before total detriment [to the defendant] can be considered. . . . Otherwise, the principle of *Snyder* and *Zahn* would be subverted, i.e., plaintiffs with minimal damages could dodge the non- aggregation rule by praying for an injunction . . . We recognized that "'[t]otal detriment' is basically the same thing as aggregation," and held that "where the equitable relief sought is but a means through which the individual claims may be satisfied, the ban on aggregation applies with equal force to the equitable as well as the monetary relief."

In re Ford Motor Co./Citibank (South Dakota), N.A., 264 F.3d 952, 959 (9th Cir. 2001) (internal citations omitted). To broaden the scope of federal jurisdiction by holding otherwise is to permit parties with minimal damages to improperly invoke the jurisdiction of the federal court simply by seeking injunctive relief. This

result does not comport with the strict construction of the limitations placed on the jurisdiction of the federal courts.

In challenging the ruling below, the Pharmaceutical Research and Manufacturers of America and the Chamber of Commerce of the United States, in their *amicus curiae* briefs, disregard the court's plain statement that if the plaintiffs in a multiple plaintiff case are asserting a right in which they have a common and undivided interest, the "either viewpoint" rule may be utilized to determine jurisdiction. *Id.*

Further, contrary to the implication of National Association of Manufacturers in their *amicus curiae* brief at 9-15, the court of appeals did not determine that the costs imposed by an injunction may never satisfy the amount in controversy requirement; only that they do not do so in this case. Additionally, the assertion by State Farm Mutual Automobile Insurance Company in its *amicus curiae* brief 6-7, that not only must the jurisdictional analysis be conducted from a defendant's point of view, but that aggregation should be permitted for defendants under circumstances in which it is not permitted for plaintiffs, is not supported by the existing law.

C. Aggregation is Not Proper in this Case.

The traditional judicial interpretation of the jurisdictional limit has been "that the separate and distinct claims of two or more plaintiffs cannot be aggregated in order to satisfy the jurisdictional amount requirement." *Snyder v. Harris*, 394 U.S. 332, 335 (1969) reh'g den. 394 U.S. 1025. As the Court in *Snyder* explained, aggregation was historically permitted only:

> (1) in cases in which a single plaintiff seeks to aggregate two or more . . . claims against a single defendant and (2) in cases in which two or more plaintiffs unite to enforce a single title or right in which they have a common and undivided interest.

Id. at 335.

The doctrine that separate, distinct claims could not be aggregated was based on the Court's interpretation of the statutory phrase "matter in controversy", and by "1916 this Court was able to say in *Pinel v. Pinel*, 240 U.S. 594 . . . that it was 'settled doctrine' that separate and distinct claims could not be aggregated to meet the required jurisdictional amount." *Id.* at 336.

The *Snyder* Court also explained that to overrule the aggregation doctrine would contradict

> [The] congressional purpose in steadily increasing through the years the jurisdictional amount requirement. That purpose was to check, to some degree, the rising caseload of the federal courts, especially with regard to the federal courts' diversity of citizenship jurisdiction.

Id. at 339-340.

Thereafter, this Court in *Zahn v. International Paper Co.*, 414 U.S. 291, 292-293 (1973), explained that when plaintiffs with "separate and distinct" demands unite in a single suit for convenience and economy, the demand of each must meet the jurisdictional threshold, but that when more than one plaintiff unites to enforce a "single title or right in which they have a common and undivided interest," it is sufficient for jurisdictional purposes if their interests collectively reach the jurisdictional threshold.

> This distinction and rule . . . were firmly rooted in prior cases dating from 1832, and have continued to be the accepted construction of the controlling statutes . . . The rule has been applied to forbid aggregation of claims where none of the claimants satisfies the jurisdictional amount.

Id. at 294-295[3]

"'[C]laims of several plaintiffs, if they are separate and distinct, cannot be aggregated for purposes of determining the amount in controversy.' . . . Only claims, whether related or unrelated, of a single plaintiff against a single defendant may be aggregated." *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 666 (3rd Cir. 2002). *See also, Wolde-Meskel v. Vocational Instruction Project Community Services, Inc,* 166 F.3d 59, 62 (2d Cir. 1999). In cases involving more than one defendant, a plaintiff may aggregate the amount claimed against multiple defendants "only if the defendants are jointly liable." *Middle Tennessee News Co., Inc. v. Charnel of Cincinnati, Inc.*, 250 F.3d 1077, 1081 (7th Cir. 2001). However, "if the defendants are severally liable, plaintiff must satisfy the amount in controversy requirement against each individual defendant."

---

[3] It has been suggested that it is not clear how *Zahn* is impacted by the enactment of 28 *U.S.C.A.* 1367. The Court in *In re Abbott Laboratories,* 51 *F.3d* 524, 529 (5th Cir. 1995) *aff'd by an equally divided court sub. nom. Free v. Abbott Labs.*, 529 *U.S.* 333 explained that "under § 1367 a district court can exercise supplemental jurisdiction over members of a class, although they did not meet the amount-in- controversy requirement, as did the class representatives." That issue, however, is not pertinent to the case presently under consideration since it is not alleged that any plaintiff individually meets the threshold for diversity jurisdiction.

Petitioners concede that "it is now well settled that in class actions – and in all cases involving multiple plaintiffs – 'the separate and distinct claims of two or more plaintiffs cannot be aggregated to satisfy the jurisdictional amount.'" Br. for Petitioners at 18. Petitioners suggest, however, that the non-aggregation rule does not bar the removal of this matter to federal court. ATLA must respectfully disagree.

1. Aggregation and the "Defendant's Viewpoint".

In *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 858 (9th Cir. 2001), the Ninth Circuit explained that utilizing the "defendant's viewpoint" for purposes of determining the amount in controversy where an injunction is sought is effectively the same thing as aggregation. A defendant in *Kanter* asserted that that the value of the injunctive relief sought by the plaintiffs in the action should be determined by calculating the cost that would be incurred by the defendants to provide the injunctive relief requested by the class, and then treating that total cost as the amount in controversy with respect to one plaintiff. The defendant contended that if the court viewed the case in this fashion, the amount in controversy would exceed $75,000.

The court determined that the defendant's argument was foreclosed by its earlier decision in *Snow v. Ford Motor Co.*, 561 F.2d 787 (9th Cir. 1977). The *Kanter* court recognized that in some earlier non-class actions, the value of injunctive relief had been calculated by examining the cost of the injunction to the defendant. However, the court noted, this approach could not be applied to class actions without undermining earlier decisions of this Court holding that class action plaintiffs cannot aggregate the

amounts of "separate and distinct" claims in order to meet the amount-in-controversy requirement. 265 F.3d. at 859.

The court in *Snow* had reasoned that "if a plaintiff cannot aggregate to fulfill the jurisdictional amount requirement of § 1332, then neither can a defendant who invokes federal jurisdiction under the removal provisions of s 1441." *Id.* at 789. The *Snow* court looked to the earlier decision in *Lonnquist v. J.C. Penney Co.*, 421 F.2d 597 (10th Cir. 1970), which addressed this issue. Although under *Snyder*, the *Lonnquist* plaintiffs could not aggregate their claims to satisfy the jurisdictional requirement, the defendants argued that, for purposes of the injunctive relief sought by the plaintiffs, the amount in controversy should be determined by the total monetary impact on each defendant. The *Lonnquist* court did not agree. It found that in cases involving separate and distinct claims that cannot be aggregated, it is not proper to look to total detriment to meet the jurisdictional requirement. *Id.* at 600.

The *Snow* court noted that the "doctrine of *Snyder* cannot be so easily evaded. The threshold question is aggregation, and it must be resolved affirmatively before total detriment can be considered." *Id.* at 789-790. In *Snow*, the court held that where the "equitable relief sought is but a means through which the individual claims may be satisfied, the ban on aggregation [applies] with equal force to the equitable as well as the monetary relief." *Id.* at 790. The proper focus is not determined by the type of relief sought by the plaintiff, but instead continues to depend upon the nature and value of the right asserted, which, in *Snow*, was described as the right of future consumers to be protected from allegedly deceptive advertising which

was said to injure them in an amount far below the jurisdictional minimum. *Id.* at 790-791. If the defendants were allowed to remove the case to federal court, it would mean that the plaintiffs could have filed it there initially. *Id.* .at 791. This suggests, of course, that all a plaintiff would need to successfully file jurisdictionally deficient claim in federal court is to seek injunctive relief. Such a result was not proper then, and it is not proper now.

The *Kantor* court suggested that in *Snow*, the defendant could have complied with an injunction on a plaintiff-by-plaintiff basis (handing out the correct parts to each future purchaser of the component in issue), but that the *Kantor* defendants could not readily stop selling or advertising the medication in question one consumer at a time. The *Kantor* court determined that this distinction was irrelevant since in both cases the right asserted was a "separate and distinct" right of individual class members, not a "common and undivided" right of the class as a whole. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 859-860 (9th Cir. 2001).

In those cases, as in this one, each plaintiff could sue to vindicate his or her rights as an individual and need not join a class in order to bring a cognizable claim. To permit every class action to satisfy the jurisdictional threshold by simply including an incidental request for injunctive relief would plainly contradict the goals of the amount-in-controversy requirement, "which serves both to preserve the jurisdiction exercised by the state courts and to limit the size of the diversity caseload in federal courts". *Id.* at 861.

In *Leonard v. Enterprise Rent a Car*, 279 F.3d 967, 973 (11th Cir. 2002), the court determined that for jurisdictional purposes, "the value of the requested injunctive relief is the monetary value of the benefit that would flow to the plaintiff if the injunction were granted." *See also, Smith v. GTE Corp.*, 236 F.3d 1292, 1309 (11th Cir. 2001). The *Leonard* court noted that the monetary benefit to any one class member was well below the jurisdictional limit and explained that, while aggregating the amounts would meet the jurisdictional threshold, as with monetary relief aggregation is appropriate only when the plaintiffs endeavor to

> enforce a single title or right, in which they have a common and undivided interest," . . . "when an injunction protects rights that are separate and distinct among the plaintiffs, the value of the injunction to the individual plaintiffs may not be aggregated to sustain diversity jurisdiction." . . .In this case, the requested injunction would protect the rights of the class members that arise from their individual lease agreements with GTE. When plaintiffs assert rights that arise from individual contracts with a defendant, those rights are separate and distinct, and thus, their claims may not be aggregated.

Id. at 1309-1310. *See also, Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1271 (11th Cir. 2000) (rule against aggregating value of an injunction that protects rights separate and distinct among plaintiffs applies to claims of insureds who sue to enforce separate and distinct rights arising from respective insurance policies).

It is noted that in *Market Company v. Hoffman*, 101 U.S. (11 Otto) 112 (1879), cited by Petitioners in support of their position (Br. for Petitioners at 12-13), the jurisdictional limit was reached by aggregating the

claims of the two hundred and six complainants who sued jointly, since the relief afforded to them was a single decree in favor of them all. The Court, however, acknowledged that "if Hoffman was the sole complainant, the amount in controversy would be insufficient to justify an appeal either by him or the company". *Id.* at 113.

More recently, the court in *Gilman v. BHC Securities, Inc.*, 104 F.3d 1418, 1420 (2nd Cir. 1997), while not deciding the issue of whether the amount in controversy may be measured by reference to the defendant when an injunction is sought, noted, "the soundness of such a jurisdictional premise is not obvious". In support of their application, Petitioners assert that a "plaintiff generally can protect itself by choosing where to commence an action". Br. for Petitioners at 14. Such "protection" is illusory if defendants are free to remove every action to federal court simply by claiming administrative or compliance costs grossly disproportionate to the recovery sought by a plaintiff.

In *In re Brand Name Prescription Drugs Antitrust Litigation*, 123 F.3d 599, 610 (7th Cir. 1997) *cert. den. sub nom. HJB, Inc. v. AmeriSource Corp.*, 528 U.S. 1181, the defendants "argued that the clerical or ministerial costs of compliance might cause a case to meet the jurisdictional threshold". *Id.* at 609. The court noted, in language applicable here, that even if an injunction merely tells a defendant to stop engaging in illegal activity, there will be lawful costs of compliance. "Just the cost of duplicating an injunction in a case such as this and distributing the copies to all the relevant personnel might exceed $50,000 for each defendant, and, if so, this would argue for allowing removal to federal court." *Id.* at 610. If such an argument were

accepted, "every case, however trivial, against a large company would cross the threshold . . . even if the plaintiff were asking for an injunction against disclosing his unlisted telephone number. It would be an invitation to file state-law nuisance suits in federal court." *Id.* at 610.

Contrary to the assertions of the Business Roundtable in its *amicus curiae* brief at 16-18, it is respectfully suggested that the relief sought in this case would not "require some alteration in the defendant's method of doing business" so as to arguably meet the minimum amount in controversy. *Id.* at 609. This case is distinguishable from the cases cited by State Farm Mutual Automobile Insurance Company in its brief at 9-11, in which plaintiffs sought relief that necessitated actual alterations of the ongoing business methods of the insurance companies.

2. No Single, Undivided Interest in Injunctive Relief Is Found in this Case.

The "the presence of a 'common and undivided interest' is rather uncommon, existing only when the defendant owes an obligation to the group of plaintiffs as a group and not to the individuals severally". *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1262 (11th Cir. 2000). The court in *Griffith v. Sealtite Corp.*, 903 F.2d 495, 498 (7th Cir. 1990) determined that although the plaintiffs' adjudged recoveries for wages from the Panamanian Labor Court were set forth in a single document, since the underlying causes of action which plaintiffs brought were separate and distinct, the plaintiffs could not aggregate their respective awards to satisfy the jurisdictional amount. In *Sellers v. O'Connell*, 701 F.2d 575 (6th Cir. 1983), the court did not

accept the argument that because all plaintiffs were required to demonstrate the invalidity of a particular resolution, they were entitled to aggregate their claims. Plaintiffs, each of whom asserted a claim to pension benefits held in a union trust fund, did not possess a common and undivided interest in the relief sought. "An identifying characteristic of a common and undivided interest is that if one plaintiff cannot or does not collect his share, the shares of the remaining plaintiffs are increased. Such is not the situation here because each plaintiff seeks to receive a fixed sum under the terms of the trust instrument." *Id.* at 579.

In *United States v. Southern Pac. Transp. Co.*, 543 F.2d 676, 683 (9th Cir. 1976), although the plaintiffs' trespass claims against the railroad presented common questions of both law and fact, the rights to exclude trespassers were not held by plaintiffs as a group. Instead, allotments of tribal lands were said to have been made to individual Indians "in severalty" and were made "in trust for the sole use and benefit of the Indian to whom such allotment shall have been made". Similarly, in *Lonnquist*, the plaintiffs claimed that certain department stores owed them refunds as a result of allegedly usurious interest charges. Those claims were deemed to be separate and distinct claims that could not be aggregated, rendering it improper to look to total detriment in order to meet the jurisdictional threshold. *Lonnquist v. J. C. Penney Co*, 421 F.2d 597, 599 (10th Cir. 1970).

The exception to the rule of non-aggregation was noted in *Troy Bank of Troy, Ind., v. G.A. Whitehead & Co.*, 222 U.S. 39, 40-41 (1911), wherein the Court explained that when several plaintiffs unite to enforce a single title or right, in which they share a common and undivided interest, their interests might be aggregated

to reach the jurisdictional amount. The court in *Troy* explained that the "controlling object" of the suit was the enforcement of a vendor's lien, which was a single thing or entity in which the plaintiffs shared a common and undivided interest, and which neither was able to enforce in the absence of the other. *Id.* at 41.

Aggregation of claims had previously been allowed in a wrongful death action when the pertinent state statute created a single liability on the part of the defendant and contemplated only a single action for the benefit of the survivors of the decedent, which action might be brought by all of the interested parties or by any one of them for the benefit of all. *Texas & P. Ry. Co. v. Gentry,* 163 U.S. 353, 360-361 (1893).

Aggregation was also permitted in a quiet-title action in which certain land was divided into separate parcels, each attributed to an individual litigant. It was explained that the litigants derived their title from a common source, and that although the land in question was divided, it comprised a single tract of land, the value of which was to be considered for jurisdictional purposes. *Skokomish Indian Tribe v. France,* 269 F.2d 555, 558-559 (9th Cir. 1959). In *Phoenix Ins. Co. v. Woosley,* 287 F.2d 531, 533 (10th Cir. 1961), the court indicated that it had jurisdiction when the original plaintiff/debtor and the nine creditors to whom he had assigned part interest in the insurance proceeds in issue united to enforce the collection of insurance against two insurance companies. The original plaintiff/debtor was said to have an interest in the collection of the insurance so that the creditors could be paid. The nine creditors had a common (but not equal) interest in the collection of this insurance since it was the source from which they might collect the money due them.

The court *Black v. Beame,* 550 F.2d 815, 818 (2nd Cir. 1977), found that claims by several members of the same family to obtain family social services were common and undivided, and aggregation of their individual claims was said to be proper.. In a business context, the court in *Eagle v. American Tel. and Tel. Co.,* 769 F.2d 541, 546-547 (9th Cir. 1985), determined that the claims of minority shareholders were common and undivided since, pursuant to state law, the source of the shareholders' claims for wrongful depletion of corporate assets is the common and undivided interest each shareholder has in a corporation's assets and a right to share in dividends. Since shareholders do not own the corporation's assets, the wrongful depletion of those assets is a direct injury to the corporation and only an indirect injury to the shareholders. As a result, shareholders normally cannot recover in their individual capacities for a wrongful depletion of corporate assets.

Where, as here, the claims of several plaintiffs are "cognizable, calculable, and correctable individually," and where recovery by a single plaintiff "would not, as a legal matter, either preclude or reduce recovery by another," aggregation is not proper. "If the aggregation rule were otherwise, the amount-in-controversy requirement would be satisfied in all large-scale but small-dollar class actions in which individual litigation is difficult or impossible as a practical matter." *Gibson v. Chrysler Corp.,* 261 F.3d 927, 945 (9th Cir. 2001).

"As one court expressed the principle, the "paradigm cases" allowing aggregation of claims "are those which involve a single indivisible res, such as an estate, a piece of property (the classic example), or an insurance policy. These are matters that cannot be

adjudicated without implicating the rights of everyone involved with the res." *Martin v. Franklin Capital Corp,* 251 F.3d 1284, 1292 (10th Cir. 2001). "When plaintiffs assert rights that arise from individual contracts with a defendant, those rights are separate and distinct" and may not be aggregated. *Smith v. GTE Corp.*, 236 F.3d 1292, 1309 (11th Cir. 2001).

Contrary to the suggestion of State Farm Mutual Automobile Insurance Company in its *amicus* brief at 13-14, this case is not one in which the injunctive relief sought would arguably "benefit the putative class as a whole and not just any individual plaintiff," such as an advertising campaign, a comprehensive vehicle recall or a provision forbidding the use of defective parts, see, e.g., *Earnest v. General Motors Corp.*, 932 F. Supp. 1469, 1472 (N.D. Ala. 1996). Nor is it one in which the plaintiffs as a group seek to preclude defendants from continuing to violate various state antitrust laws, and conspiring to prevent lower-cost generic versions of a prescription heart medication from entering the United States marketplace. *See In re Cardizem CD Antitrust Litigation,* 90 F. Supp. 2d 819, 822 (E.D. Mich. 1999).

The court of appeals below correctly noted that the claims in this case, arising out of the termination of a rebate program do not implicate a "single indivisible res." Instead, these claims could clearly be adjudicated on an individual basis because the plaintiffs have no common and undivided interest in accruing rebates under the discontinued program. To the contrary, each plaintiff charged purchases to their credit cards, and accrued rebates, individually. Prior to the commencement of the litigation, they did not share any common interest. *In re Ford Motor Co./Citibank (South Dakota), N.A.*, at 959.

The court pointed out that Petitioners accurately stated, in their memorandum opposing class certification, that the case did not "involve a common fund or a joint interest among cardholders. Instead, it involves a collection of individual claims based on individual patterns of consumer purchasing decisions." As a result, Petitioners apparently concluded that "[b]ecause the [putative] class members in this case do not in any sense possess joint ownership of, or an undivided interest in a common res, their claims...are separate and distinct." *Id.* at 960. As a result, this case is not one in which aggregation is necessary or proper.

3. Use of Petitioners' Inflated Compliance Number Does Not Confer Jurisdiction.

Petitioners assert that even if the costs of compliance are not aggregated, they nevertheless meet the amount in controversy requirement. The court of appeals, however, correctly identified the flaw in Petitioners' assertion that because the cost of an injunction running in favor of one plaintiff would allegedly exceed $75,000, aggregating the cost of compliance is unnecessary to satisfy the jurisdictional threshold. Petitioners suggest that, although the monetary benefit to an individual plaintiff of reinstating the rebate accrual program is clearly limited and does not nearly meet the jurisdictional requirement, the cost to Petitioners of reinstating and maintaining the rebate program would be the same whether it is done for one plaintiff or for six million plaintiffs. Petitioners thus claim that since the non-aggregation rule would not be violated if their administrative costs were used to meet the jurisdictional requirement, the court could utilize the

"either viewpoint" rule to establish the jurisdictional amount. *Id.* at 960.

The United States suggests that it would "seem artificial to place the 'value' of the 'matter in controversy' at anything less than the amount at stake for either the plaintiff or the defendant, whichever is greater." Br. of United States at 12. The court of appeals, however, noted that while such an argument initially appeared to be consistent with the principle enunciated in *Snow:*

> [I]t is fundamentally violative of the principle underlying the jurisdictional amount requirement--to keep small diversity suits out of federal court. If the argument were accepted, and the administrative costs of complying with an injunction were permitted to count as the amount in controversy, "then every case, however trivial, against a large company would cross the threshold." . . ."It would be an invitation to file state-law nuisance suits in federal court." . . .Therefore, we hold that the amount in controversy requirement cannot be satisfied by showing that the fixed administrative costs of compliance exceed $75,000.

In re Ford Motor Co./Citibank (South Dakota), N.A., at 960-961.

The question of what constitutes the "amount at stake" is a critical one. As recognized by the court of appeals, the Petitioners' viewpoint permits a defendant to argue that if an individual plaintiff with a $12 claim prevails, it will cost them $1 million to comply with the anticipated determination of the court, thus meeting the jurisdictional threshold for removal of the suit to federal court.

Such a result contravenes the constitutional limitations on the jurisdiction of the federal courts and the attempts by Congress to limit the access to those courts. It opens those courts to virtually every class action suit without any determination by Congress that such suits properly belong in the federal courts. *In re Ford Motor Co./Citibank (South Dakota), N.A.*, at 961. Such a result also ignores the ability of a state court to fashion a remedy that is properly responsive to a plaintiff's claim without causing a defendant to incur exorbitant costs of compliance, thereby avoiding the nightmare scenario presented by Petitioners that it will cost them millions to address claims that do not exceed $3,500.

The practical underpinnings of this case should not be disregarded. It has been said that if "the defendant can extinguish the plaintiff's entire claim by tendering $75,000 or less at the outset, then the amount 'in controversy' does not exceed $75,000." *Hart v. Schering-Plough Corp.*, 253 F.3d 272, 274 (7th Cir. 2001). Plainly that could have been done here. In determining the value of the amount in controversy, the court "must measure the amount 'not...by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated.'" *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 666 (3rd Cir. 2002).

ATLA respectfully suggests that a court should likewise not determine the value based solely on the high-end administrative costs figure provided by a party seeking federal jurisdiction. A court should instead isolate the actual core value of the dispute. As the Seventh Circuit suggested in a different context in *Caudle v. American Arbitration Ass'n*, 230 F.3d 920, 923 (7th Cir. 2000),

> [S]uppose Michael Jordan left his Ferrari in a garage, which would not return the car until he paid $10 for two hours' parking. Could Jordan get review in federal court of his contention that $10 is an 'unreasonably high fee' for such a short stay by alleging that the value of the detained car exceeds $75,000? Surely not; the real controversy concerns the difference (if any) between $10 and the proper fee for two hours' parking. By paying $10 Jordan could have his car immediately while continuing his quest for a refund.

Id. at 923.

The decision of the court of appeals in this case did not, as suggested by the National Association of Manufacturers' brief at 17, impermissibly limit federal subject matter jurisdiction. It simply recognized that such jurisdiction is necessarily limited, and found that the facts of this case did not meet the jurisdictional requirement. While Petitioners threaten "substantial confusion and protracted litigation over how to determine whether a cost is 'administrative'", and a waste of resources by judges and litigants wrestling with the extent of federal question jurisdiction, Br. for Petitioners at 23, it has long been accepted that the amount in controversy is determined by the "object of the suit." *Healy v. Ratta,* 292 U.S. 263, 268 (1934).

Further, it is clear that "objects which are merely collateral or incidental to the determination of the issue raised by the pleadings" are not considered for purposes of jurisdiction. *Id.* The appellate court could properly have determined that business decisions made solely by Petitioners about how best to comply with a determination of the court affording relief to the various plaintiffs constitute either ministerial costs of compliance or were collateral or incidental to the

determination of the issues actually raised by the pleadings.

In this case, a single plaintiff may have a claim in an amount ranging from $1 to $3,500. Petitioners assert, however, that the costs to them to address any one claim exceed $75,000 per month. Br. for Petitioners at 16. Plainly a court must determine the reasonable value of the object of the suit, and the rights and issues actually being litigated. The court of Appeals correctly did so when it found that the jurisdictional threshold had not been reached.

Contrary to the concerns expressed by some of the Petitioners' supporting *amici* in this case, the determination of the court of appeals does not improperly foreclose class actions from federal courts. It merely requires them to meet the long-established jurisdictional threshold. This case did not.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

Jeffrey Robert White
1050 31st Street, N.W.
Washington, DC 20007
202-965-3500

Laura C. Tharney
555 Rt. 18 South, PMB 219
East Brunswick, NJ 08816
732-448-9300

Attorneys for Amicus Curiae

June 5, 2002